

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA040209)**

INTRODUCTION

On 4/2/09, the Nevada Superintendent of Public Instruction received a complaint dated 4/2/09 from parents alleging a violation in the special education program of a student with disabilities attending Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD failed to provide the parents with a full and complete copy of the student's education record, including emails, prior to an April 2008 Individualized Educational Program (IEP) meeting.

The parents also requested that the Nevada Department of Education (NDE) order the district to cancel the scheduled 4/6/09 IEP meeting until they (parents) had been provided access to all education records. The parents were notified by the NDE that it did not have jurisdiction to cancel the 4/6/09 IEP meeting as state regulations at NAC §388.281(8)(a) give the district authorization to schedule IEP meetings.

The parents, in an interview with the investigation team, clarified that their allegations with regard to the failure to provide a full and complete copy of the education record was limited to the student's 2008/2009 education record. The parents also clarified that their allegations included a failure of the district to provide a list stating where the student's files were kept and what records were kept at each location as requested in one of their letters to the district that was submitted as part of the original complaint request.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the NDE:

- Issue 1: Whether the district complied with federal and state requirements to permit the parents to inspect and review the student's 2008/2009 education records, including emails, prior to the 4/6/09 IEP meeting.
- Issue 2: Whether the district complied with state requirements to provide the parents with a list of the types and locations of educational records collected, maintained or used for the 2008/2009 school year.
- Issue 3: Whether the district complied with federal requirements to inform the parents when personally identifiable information collected, maintained or used was no longer needed to provide educational services to the student.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parents
- Special education area administrator (area administrator)
- Principal
- Case Manager
- School psychologist (psychologist)
- School counselor (counselor)
- English, math, science, reading and social studies teachers (regular education teachers)
- Teacher assistant
- Autism consultant
- Occupational therapist (OT)
- Internet technology security chief (IT security chief)

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- Parents' letters to the district dated 3/16/09, 3/23/09 and 3/31/09 (March requests for records)
- Prior written notice (PWN) of refusal dated 3/24/09
- PWN dated 4/1/09 regarding provision of education records
- PWN dated 4/1/09 regarding provision of OT records
- District letter to the parents dated 4/2/09
- District list of documents sent to parents prior to 4/6/09 following the March requests for records
- Parents' list of documents received prior to 4/6/09 following the March requests for records
- Educational records provided to parent following the March requests for records
- Emails retrieved by district covering the time period of 3/8/09–4/2/09
- Samples of email correspondence between parents and district staff between 9/08 and 2/09 provided by parents
- WCSD Procedures for Maintaining and Storing of Student Records

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- Family Educational Rights and Privacy Act (FERPA) Regulations, 34 CFR Part 99

FINDINGS OF FACT

This investigation involved a middle school student eligible for special education with autism who attended WCSD during the 2008/2009 school year. A review of documents, as well as interviews with the parents, principal, area administrator, case manager, psychologist, counselor, autism consultant, IT security chief, OT, teacher assistant and regular education teachers revealed the following facts.

The parents, in response to a meeting notice received on 3/13/09 for a 4/6/09 annual IEP meeting, sent a 3/16/09 request to the district for "a copy of [the student's] entire cumulative and confidential records ... including all tests, reports, evaluations, grades, notes by teachers, notes by other staff members, other correspondence ... in short, everything in [the student's record] ... by 3/25/09." The parents requested information about any policies regarding photocopying student records for parents. The 3/16/09 letter indicated that the parents wanted to review the records prior to the 4/6/09 IEP meeting.

After receiving some of the student's education records from the district on 3/20/09, the parents sent a 3/23/09 letter to the district specifying that certain items had not been received and requested those items so they could be reviewed prior to the 4/6/09 IEP meeting.

After receiving additional education records from the district on 3/26/09, the parents sent a 3/31/09 letter to the district stating that they still had not received all the education records and requested that they be produced prior to the 4/6/09 IEP meeting. In addition, the parents requested a list of where the student's files were kept and what records were kept at each location.

On 4/1/09 the district sent a letter to the parents indicating that it had provided copies of all of the student's education records to date, including copies of the behavioral data and teacher input, in advance of the meeting. The letter included a PWN stating that OT records would be provided to the parents by 4/3/09. The parents stated that they did receive OT records from the district on 4/3/09.

The parents, in an interview with the investigation team, reported that they had requested copies of all the records, because they were concerned that records may not have been maintained during the 2008/2009 school year. In addition, they were concerned that they may not have received all of the Teacher Notes (described in the following paragraph) that were routinely given to the student to bring home each day.

They also stated that they may not have had a full understanding of the student's behavior because they did not believe they had received all the copies of the behavioral data collected by the district.

The regular education teachers reported that they each filled out a Teacher Note with the student's name on it, describing how the student performed in class on the days the student was in attendance. The Teacher Note consisted of a top sheet that was sent home with the student and a duplicate sheet that was given to the case manager. The case manager stated that she kept copies of the Teacher Notes in a binder in her office. Copies of the Teacher Notes were not provided to the parents after their March requests for records. The case manager reported that she believed she did not have to produce her copies of the Teacher Notes because the parents had been provided with copies of them when they were originally given to the student throughout the year.

The case manager also reported that she had a binder of email correspondence relating to the student over the school year. These emails were not provided to the parents after their March requests for records. The case manager reported she did not produce the emails in her possession as the parents had been one of the recipients or senders of all of those emails and must have already had them in their possession.

The teacher assistant reported that she gathered several types of behavioral data while observing the student, some on a daily basis and some on a weekly basis. The teacher assistant retained a copy of all the behavioral data she collected, sent copies home with the student and passed on the originals to the case manager. The teacher assistant stated that she had not produced her files subsequent to the parents' March requests for records.

The case manager stated that she forwarded the behavior data given to her by the teacher assistant to the autism consultant whose job was to graph the data. The autism consultant reported that she had returned some data to the special education program consultant and had retained other data in her own files. All of the data that was retained by the autism consultant was not included in the education records provided to the parents because the autism consultant believed the parents already had copies of that data and thus did not produce it when she became aware of the March request for records. The special education program consultant reported that she did not have any behavioral data in her possession.

The school psychologist reported that he worked with the student weekly on reading fluency and emailed the parents each time he worked with the student. The school psychologist stated that he had archived those emails. Those emails were not produced by the district in response to the parents' March request for records. The science teacher reported that he had hard copies of correspondence with the parents. The parents stated that this correspondence was not produced in response to the March request for records.

The parents reported that they had been in email correspondence with all the regular education teachers throughout the 2008/2009 school year regarding the student's education and none of this was produced in response to the March requests for records. The parents provided copies of some of the emails that had been sent to them from the district staff regarding the student's education through 9/08 and 2/09. The emails contained the student's name, either one or both of the parent's names and described how different academic or behavior services would be provided to the student. The parents reported that they had not been informed by the district when any personally identifiable information, including the emails, had been determined to be no longer necessary to provide educational services to the student.

The other regular education teachers reported that they had not archived or kept hard copies of correspondence with the parents. The area administrator and the IT security chief reported that emails, unless archived by staff, were deleted from the district server within sixty days. Subsequent to the complaint, on 5/12/09, the district provided the investigation team with copies of emails that had been retrieved from the server and had been written up to sixty days previously. The area administrator

reported that there was not yet a district policy in place with regard to how emails would be managed when they were part of an educational record. The district's written procedures on maintaining and storing records does not include a process for notifying parents when personally identifiable information collected, maintained or used was no longer needed to provide educational services to a student.

The area administrator provided the parents with a list of the educational records held by the district in a 4/1/09 PWN in which she wrote: "Student Support Services received a request for copies of all of [the student's] educational records. The student's Cumulative File, School Psychologist file, the case manager's data file, the Speech/Language file & Special Education Confidential files were copied and provided to parents. The district has provided copies of all records received." The area administrator and parents reported that the locations of the documents collected, maintained, and used by the district was not provided in response to the parents' request.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether the district complied with federal and state requirements to permit the parents to inspect and review the student's 2008/2009 education records, including emails, prior to the 4/6/09 IEP meeting.

This complaint concerned an allegation that the district failed to provide the parents with a complete copy of the student's 2008/2009 education records, including emails, prior to the 4/6/09 IEP meeting.

Federal regulations at 34 CFR §300.611(b) state that "Education records means the type of records covered under the definition of 'education records' in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA))."

Federal FERPA regulations at 34 CFR §99.3 define and clarify education records as those records that are "(1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution. FERPA further clarifies in the definition of record that it "means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche."

State regulations at NAC §388.287(1)(a) state that the "The parents of a pupil must be allowed to inspect and review any educational records relating to their child which are collected, maintained or used by a public agency. The public agency shall comply with such request without unnecessary delay and in any event: (a) Before any meeting regarding an individualized education program"

It is important to note that the IDEA incorporates the FERPA's definition of education records as comprising those records that are directly related to the student, maintained by the district and recorded in any way. In this case, the district did not provide the parents, upon request, with the opportunity to inspect all the Teacher Notes, emails and behavior data collected and maintained throughout the 2008/2009 school year. While the parents received copies of some or all of the Teacher Notes, emails and behavior data throughout the school year, this did not relieve the district of the obligation to provide the parents with an opportunity to inspect and review all the education records, including these, prior to the 4/6/09 IEP meeting.

Therefore, the investigation team concluded that WCSD did not comply with federal and state requirements to permit the parents to inspect and review the student's education records, including emails, prior to the 4/6/09 IEP meeting.

Issue 2: Whether the district complied with state requirements to provide the parents with a list of the types and locations of educational records collected, maintained or used for the 2008/2009 school year.

This complaint concerned an allegation that the district failed to provide the parents with a list of where the student's files were kept and what records were kept at each location.

State regulations at NAC §388.287(6) that "The public agency shall maintain and provide to parents on request a list of the types and locations of educational records it collects, maintains or uses relating to pupils."

In this case, the parents on 3/31/09 requested among other things that the district provide a list of where the student's various files were kept and what records were kept at each location. In response, the district sent the parents a letter along with PWNs regarding records, but the district did not provide a list of the types of education records it collected, maintained or used for the student.

Therefore, the investigation team concluded that WCSD did not comply with state requirements to provide the parents with a list of the types and locations of educational records collected, maintained or used for the 2008/2009 school year.

Issue 3: Whether the district complied with federal requirements to inform the parents when personally identifiable information collected, maintained or used was no longer needed to provide educational services to the student.

This complaint concerned an allegation that the district did not maintain emails that were part of the student's education record.

Federal regulations at 34 CFR §300.624(a) state that "The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child."

FERPA regulations at 34 CFR §99.3 state that the term, personally identifiable information, "...includes, but is not limited to—(a) The student's name; (b) The name of the student's parent or other family... ."

In this case, there had been email communications between the parents and district staff during the 2008/2009 school year that included the student's name and/or the parents' names. Emails not archived by staff members and written prior to sixty days before the parents' request for the education records were deleted from the district's computers. The investigation team determined that there were emails with personally identifiable information that had been used to provide educational services to the student throughout the 2008/2009 school year. However, when the parent requested access to these emails, the emails were unavailable because they had been deleted. Although the district is permitted to destroy education records in accordance with federal and state record retention requirements, the district was obligated to inform the parents that the information in the emails was no longer needed to provide educational services to the student and failed to do so.

Therefore, the investigation team concluded that WCSD did not comply with federal requirements to inform the parents when personally identifiable information, collected, maintained, or used was no longer needed to provide educational services to the student.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not: 1) permit the parents to inspect and review all the student's education records, including emails, prior to the 4/6/09 IEP meeting; 2) provide the parents with a list of

the locations of educational records collected, maintained or used by the district; and 3) inform the parents when personally identifiable information was no longer needed to provide education services to the student.

Directed Action

Within 30 days of receipt of this report, the district must: 1) offer the parents an opportunity to inspect and review all the Teacher Notes and emails in the case manager's files, the emails in the psychologist's files and a copy of all the behavior data in the teacher assistant's files; and 2) provide a list of the locations of the student's educational records collected, maintained or used in the 2008/2009 school year up to the date of the complaint. The district must submit written documentation to the NDE within 30 days to demonstrate compliance with this directed action.

Professional Development/Training

Within 30 days of receipt of this report, the WCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must:

1. Include a plan to review and revise district policies and procedures with regard to the destruction of personally identifiable information that is collected, maintained, or used by the district when it is no longer needed to provide educational services to students.
2. Provide professional development for teachers and administrators at the school site on the requirements to:
 - a. Allow parents to inspect and review all educational records prior to IEP meetings;
 - b. Provide parents with a list of the types and locations of educational records collected, maintained or used by the district when requested; and
 - c. Inform parents when personally identifiable information collected, maintained and used, including emails, is no longer needed by the district in order to provide education services to students.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.